

AUG 25 2006

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed August 4, 2006.

The Examiner is thanked for helpful discussion and suggestions in an interview on August 22, 2006. Claims 25-43 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected claims 25-43. Claims 28, 30, 42 and 43 have been cancelled. The Applicant reserves the right to prosecute the cancelled and other claims in division or continuation applications. Claims 25-27 have been amended with a limitation agreed upon with the Examiner. Claims 29 and 31-41 have been amended to change the dependency of the claims. Claims 25-27, 29 and 31-41 remain for the Examiner's consideration. Reconsideration and withdrawal of the rejections are respectfully requested.

A) Claim Rejections - 35 U.S.C. § 112

The Examiner states that **"Claims 26 and 27 appear to be dependent of claim 25, but have calcium, potassium, and sodium ranges outside of the instant claim 25"**.

In order to further the prosecution of this application, the Applicant amends Claims 26 and 27 so as to make these claims independent of Claim 25.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the 112 rejection.

B) Claim Rejections - 35 U.S.C. § 103

Claims 28, 31-34 and 38-39 are rejected under 35 U.S.C. §103(a), as being unpatentable over US 5,612,039 (hereafter '039) in view of Clouatre et al. ("The Diet and Health Benefits of HCA") (hereafter "*Clouatre*").

In order to further the prosecution of this application, Claims 28 and 30 have been cancelled. Claims 29 and 31-41 have been amended to change the dependency to independent Claim 25.

Claims 31-34 and 38-39 all directly depend from independent Claim 25, and are therefore believed patentable for at least the same reasons as the independent Claim 25 and because of the additional limitations of these claims. The Examiner is respectfully requested to reconsider the 35 USC §103 rejection.

C) New Claim Rejections - 35 U.S.C. § 112

The Examiner states that "Claims 28-41 are rejected under 35 U.S.C. §112, first paragraph".

Claims 28 and 30 have been cancelled. Claims 29 and 31-41 have been amended to change the dependency to independent Claim 25.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the 35 U.S.C. §112 rejections.

D) Double Patenting

Claims 25, 26, 28-30 and 42 are provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 3-5, 7-9 and 12 of Application No.: 11/209429 ('429).

Claims 28, 30 and 42 have been cancelled. The Applicant asserts that no statutory double patenting remains. The Applicant respectfully requests that should a statutory double patenting issue remain, then it be addressed when an application is otherwise in condition for allowance.

Claims 31, 32 and 38-40 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-2, 6, 10-11 and 13-36 of Application No.: 11/209429 ('429).

The Applicant files a 37 C.F.R. 1.131 terminal disclaimer affidavit in this application.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the double patenting rejections.

CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

DRAFT

Date: _____

By: _____

Anthony G. Craig.
Reg. No. 50,342

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800
Customer No.: 23910